



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 18, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0318

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested	Not Sustained (Lawful and Proper)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested	Not Sustained (Lawful and Proper)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employees engaged in bias-based policing, used excessive force, and failed to identify themselves to the Complainant during an accident investigation that resulted in her arrest.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a 911 call of a car that had crashed into two parked vehicles. The 911 caller reported that the driver – the Complainant in this case – appeared to be under the influence. When NE#1 and NE#2 arrived and contacted the Complainant, the Complainant's car was partially up on a curb. At that time, the Complainant exhibited behaviors consistent with being under the influence of a narcotic. The Complainant agreed to participate in voluntary field sobriety tests. Based on the observations of the



officer who conducted the tests, the Complainant was arrested for DUI. The Complainant later alleged that the Named Employees arrested her because she was a White woman in the International District, which she described as a predominantly minority neighborhood. Based on SPD policy, this matter was referred to OPA because of the Complainant's allegation of bias and her request for a referral. As a result, this investigation ensued.

OPA's investigation included a review of the officers' Body Worn Video (BWV), In Car Video (ICV), police reports, and an interview of the Complainant.

During OPA's interview of the Complainant, she alleged that she remained in handcuffs for a prolonged period, which resulted in her suffering bruising all over her hands. The Complainant also claimed that she requested the names and badge numbers of the officers, but they refused to provide that information to her. In terms of her bias allegation, the Complainant acknowledged that she was not in the International District at the time but stated that she "was in an area of the city that was predominately not Caucasian" and, by virtue of that situation, was a member of a minority who was discriminated against. The Complainant also claimed that the officers acted with bias by judging her negatively and took police action against her because of the clothes she was wearing and the fact that they perceived her to be someone who was experiencing homelessness.

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

Based on OPA's review of the evidence – most notably, the BWV, it is clear that there was abundant probable cause for the Complainant's arrest and that she was taken into custody based on the belief that she had been driving under the influence, not because of her race or because the officers perceived her to be homeless. Indeed, OPA finds that the Complainant's assertion that she was subjected to biased policing to be completely without merit under the undisputed facts of this case.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as to both Named Employees.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 – Allegation #2

5.001 - Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested

SPD Policy 5.001-POL-7 requires that SPD employees engaged in department related activities "provide their name and Department serial number verbally, or in writing if requested." (SPD Policy 5.001-POL-7.)

The evidence establishes that the Complainant was provided with a copy of the search warrant for a blood draw, which would have included the requested information, as well as with a business card with the officers' names and badge numbers on it. Additionally, OPA found nothing on the BWV indicating that either of the Named Employees failed to provide their identifying information when asked.



Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as to both Named Employees.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 – Allegation #3

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

The arrest of the Complainant was captured on BWV. The video showed that the only force used on the Complainant was the application of handcuffs. It also showed that the Complainant repeatedly twisted and turned her wrists while handcuffed. In response to her complaint of pain, the Named Employees completed a use of report. This documentation was, in turn, reviewed by SPD supervisors. No issues were identified by the chain of command, and OPA concurs with that assessment.

The Complainant provided photographs to OPA showing bruises to her wrists and arms. However, the photographs were not date and time stamped, and BWV of the incident does not support that the Named Employees’ actions could have plausibly led to the photographed injuries. From OPA’s review, the Named Employees used a low level of force when handcuffing her. The force was reasonable as the Complainant was under arrest, and it was necessary to effectuate the arrest. Lastly, the minimal force was no more than needed to place the Complainant under arrest and was proportional under the circumstances.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 – Allegation #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (*see* Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**



Named Employee #2 – Allegation #2

5.001 - Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 – Allegation #3

8.200 - Using Force 1. Use of Force: When Authorized

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**